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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	76293326
Applicant	Prema Jyothi Light
Applied for Mark	SHIMMERING BALLERINAS & DANCERS
Correspondence Address	PREMA JYOTHI LIGHT 8601 W. Cross Dr. #F5-135 Littleton, CO 80123 UNITED STATES gloriouslybrightfaithlight@inbox.com
Submission	Applicants Request for Remand and Amendment
Attachments	SHIMMERING BALLERINAS REQUEST FOR FURTHER REMAND.pdf (3 pages)(91877 bytes)
Filer's Name	PREMA JYOTHI LIGHT
Filer's e-mail	gloriouslybrightfaithlight@inbox.com
Signature	/ prema jyothi light /
Date	02/08/2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NAME OF APPLICANT: Prema Jyothi Light

NAME OF TRADEMARK: SHIMMERING BALLERINAS & DANCERS

SERIAL NUMBER: 76293326

FILING DATE OF APPLICATION: First filed July 9, 2001
Later refiled July 31, 2001

DATE OF FINAL OFFICE ACTION: June 15, 2009

DATE OF REQUEST FOR RECONSIDERATION AND NOTICE OF APPEAL: December 15, 2009

DATE OF LETTER DENYING RECONSIDERATION: January 28, 2010

DATE OF THIS REQUEST: February 8, 2010

EXAMINING ATTORNEY: Paul F. Gast, Esq., Law Office 106

**REQUEST FOR FURTHER REMAND TO EXAMINING ATTORNEY
FOR FURTHER CONSIDERATION OF REQUEST FOR RECONSIDERATION**

Applicant Prema Light hereby requests that the TTAB remand this application back to the Examining Attorney for further consideration of her Request for Reconsideration, for the following reasons.

On December 15, 2009, Applicant Light submitted a timely Request for Reconsideration to the Examining Attorney, with new specimens in support thereof soon to follow. She simultaneously submitted a timely Notice of Appeal to the Examining Attorney's Final Action, to the TTAB, to preserve the right of appeal.

This was just about a week before the Christmas, Hannukah and New Year's holidays, and Applicant discovered that she had to reformat her specimens in order to submit them properly via TEAS. Fortunately, she was told by a PTO supervisor by phone that as long as she

timely submitted her REQUEST FOR RECONSIDERATION, and her timely NOTICE OF APPEAL to the TTAB, the new specimens and drawings could follow later. She was not given any specific deadline for this. She explained all this in her Request for Reconsideration, which was timely filed via TEAS.

She was in the process of reformatting her supporting drawings and specimens, when about a week after New Year's Day, on January 6, 2010, she had an unexpected accident. She was walking along an icy, snowy sidewalk, on crutches, in downtown Denver. It was snowing, and her crutches slipped on the ice and snow, causing a serious fall onto the hard sidewalk. She had to be ambulated to the nearest hospital emergency room, where she spent the next four hours. She suffered injuries to her already-injured feet, as well as painful injury to her knees, hands, neck and back. The medical and hospital costs for this single evening alone came to over three thousand dollars, and further surgery may be needed.

This has caused delays in her ability to complete the reformatting and submission of her supporting drawings and specimens for her Request for Reconsideration.

The Examining Attorney's letter of denial of her Request for Reconsideration, dated January 28, 2010, has reached her while she is still in recovery from this accident. She is therefore in need of more time to complete the reformatting and submission of the drawings and specimens, and requests an additional four months, until June 18, 2010, for submission of the reformatted drawings and specimens. Her hands were injured in the fall.

The specimens which she sent earlier, in support of her Trademark application, never were given to the Examining Attorney, and apparently were lost somewhere within the PTO. Therefore, it is Applicant Light's hope that if the drawings and specimens are submitted via TEAS rather than by surface mail, they will successfully reach the Examining Attorney for his consideration.

Secondly, according to TMEP § 715.04(b), **Examining Attorney's Action When New Issue or New Evidence is Presented and Notice of Appeal Has Been Filed:**

“If the request for reconsideration includes an amendment that presents a new issue, the examining attorney must issue a new nonfinal Office action with a six-month response clause.”

And further:

”When the examining attorney issues a new action, the Office action should explain that the applicant must respond to all requirements or refusals within six months of the mailing date of the action and that the appeal will remain suspended while the application is on remand.”

Applicant's Request for Reconsideration did present a New Issue, namely, a claim of acquired distinctiveness, in the alternative, under 15 U.S.C. §1052(f). According to TMEP § 1212.02(h), a § 2(f) claim of acquired distinctiveness is considered to be a New Issue.

Also, according to TMEP § 1212(c),

“When an applicant claims acquired distinctiveness in the alternative, the examining attorney should treat separately the questions of: (1) the underlying basis of refusal and; (2) assuming the matter is determined to be registrable, whether acquired distinctiveness has been established.”

However, in his letter dated January 28, 2010, denying Applicant’s Request for Reconsideration, the Examining Attorney did not address this New Issue of acquired distinctiveness at all. This New Issue is separate from any other issues discussed in the Final Office Action dated June 15, 2009, and requires a separate, nonfinal response.

Applicant Light also submitted a second New Issue, namely whether the Final Office Action dated June 15, 2009, was Premature, as delineated in TMEP § 714.06. In her RESPONSE TO OFFICE ACTION, she had requested clarification on the issue regarding resubmission of the Mark in Standard Characters Format, so that she could select the best possible samples in support of her application.

However, this New Issue was also not addressed at all by the Examining Attorney’s letter dated January 28, 2010. And, as a New Issue, again, in accordance with TMEP § 715.04(b), the proper response for the Examining Attorney would have been a nonfinal action with a six-month response clause.

For the above reasons, Applicant Light respectfully requests a further Remand of her Trademark application back to the Examining Attorney, for (1) an extension of time to submit the reformatted specimens for his thoughtful review, due to accident and the resulting medical emergencies, and (2) for further consideration, proper evaluation, and proper response to her Request for Reconsideration, which contained New Issues, in accord with the above-cited provisions of TMEP § 715.04(b), TMEP § 1212.02(h), and 15 U.S.C. §1052(f).

She also requests a response to this Request to her email address of record, INSTEAD of her surface mail address, as her physical location may be changing soon.

Respectfully submitted,

/ Prema Jyothi Light /

Prema Jyothi Light
gloriouslybrightfaithlight@inbox.com